IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

WP(C).No. 11984 of 2004(B)

AGAINST THE ORDER DATED / / IN & 65/1999 IN CMA.51/1999 of II ADDL. DISTRICT COURT, TRIVANDRUM

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PETITIONER:

LAL.K.LEKSHMANAN S/O. LAKSHMANAN,
AGED 29 YEARS, LAL SREE, KOTTAMAM, PERUVAKKAL P.O.
TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:

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1. **G.SULOCHANA, T.C. 27/907, VELLARDA HOUSE, VANCHIYOOR, TRIVANDRUM**

2. **JANAKI DAMAYANTHY, KUMBOMVILA VEEDU, KOTTAMAM, PARASUVAKKAL P.O., NOW RESIDING AT TC 27/907, KANAKA NAGAR, KOWDIAR, TRIVANDRUM.**

3. **KUNJAN LEKSHMANAN, LAL SREE, KOTTAMAM, PARASUVAKKAL P.O., TRIVANDRUM DISTRICT.**

BY ADV. SRI.V.SURESH
SRI.G.SUDHEER
SRI.R.S.KALKURA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.11984/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT IN OS. NO.56/97 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

EXT.P2;- COPY OF THE WRITTEN STATEMENT FILED BY THIS PETITIONER IN IS.NO.56/97.

EXT.P3:- COPY OF THE IA.NO.1223/97 IN OS. NO.56/97 FILED BY THE 2ND RESPONDENT.

EXT.P4;- COPY OF THE OBJECTION FILED IN EXT.P3.

E3XT.P5:- COPY OF THE DOCUMENT NO.1419/78 DT.3.5.78.

EXT.P6:- COPY OF THE DOCUMENT NO.111/1997 DT.10.1.1997 EXECUTED BY SMT.JANAKI IN FAVOUR OF THE PETITIONER.

EXT.P7:- COPY OF THE DOCUMENT NO.112/ 97 DT.10.1.97 EXECUTED BY SMT.JANAKI IN FAVOUR OF THE PETITIONER.

EXT.P8:- COPY OF THE SETTLEMENT DEED NO.1631/97 DT.23.5.97 EXECUTED JANAKI IN FAVOUR OF SASIKUMAR AND ANOTHER.

EXT.P9:- COPY OF THE ORDER IN OA. NO.44/1972 DT.17.11.1972 OF THE LAND TRIBUNAL PARASSALA.

EXT.P10:- COPY OF THE SALE DEED NO.2065/99 EXECUTED BY SASIKUMAR IN FAVOUR OF RAGHUVARAN.

E.XT.P11:- COPY OF THE ORDER DT.9.4.99 IN OS. 56/97 ON THE FILE OF THE SUB COURT NEYYATTINKARA.

EXT.P12:- COPY OF THE ORDER DT.19.9.97 IN CMA.51/99 ON THE FILE OF THE DISTRICT COURT, TRIVANDRUM.

EXT.P13:- COPY OF THE JUDGMENT DT.16.3.04 IN CMA.51/99 AND65/99 OF THE DISTRICT COURT, TRIVANDRUM.

RESPONDENTS EXHIBITS

EXT.R2(a):- COPY OF THE PARTION DEED. NO.1400 DT.9.5.1970.

EXT.R2(b):- COPY OF THE MEDICAL CERTIFICATE DT.11.9.97 ISSUED BY THE COSMOPOLITAN HOSPITAL (P) LTD.

EXT.R2(c):- COPY OF THE MEDICAL CERTIFICATE DT.10.10.1987 ISSUED BY THE G.G.HOSPITAL.

EXT.R2(d):- COPY OF THE COMMISSION REPORT DT.10.11.97 .

EXT.R2(e):- COPY OF THE IA. NO.2066/97.

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EXT.R2(f):- COPY OF THE COMMISSION REPORT FILED BY THE ADV.COMMISSIONER DT.20.2.2000.

EXT.R2(g):- COPY OF THE APPLICATION FILED BY THE PLAINTIFF IN OS. NO.56/1997 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

EXT.R2(h):- COPY OF THE JUDGMENT DT.11.12.200 IN 607/2000 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, NEYYATTINKARA.

EXT.R2(I):- COPY OF THE ORDER DT.8.2.2000 IN IA. NO.129/2000 IN OS. NO.18/2000 ON THE FILE OF THE IIND ADDL. MUNSIFF'S COURT, NEYYATTINKARA.

/TRUE COPY/

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M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.11984 OF 2004

DATED THIS THE 1st DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the third defendant in O.S.56/1997 on the file of Sub Court, Neyyattinkara. First respondent is the plaintiff and respondents 2 and 3, defendants 1 and 2 respectively. Plaintiff, defendants 1 and 2 are the children of Kunjan Panicker and Neelu Janaki. The suit was filed by first respondent, for partition of eight items of properties originally belonged to Kunjan Panicker and Neelu Janaki. Admittedly under Ext.P5 settlement deed dated, 3.5.1978 executed by Neelu Janaki, properties were settled in favour of her children, the plaintiff and defendants 1 and 2. The case of plaintiff and first defendant was that plaintiff and defendants 1 and 2 are entitled to 1/3 share each in the plaint schedule properties under Ext.P5. The case of third defendant was that Ext.P5 settlement deed is actually a will and under Ext.P6, it was cancelled on 10.1.1997 and thereafter Neelu Janaki executed Ext.P7 settlement deed on the same day where under items 1,2,5 and 6 of plaint schedule properties were settled in favour of third defendant and subsequently under Ext.P8, item No.7 of plaint schedule properties was settled in favour of Sasikumar and

Balachandran, the children of first defendant and under Ext.P10 Sasikumar, son of first defendant sold twenty five cents of item No.7 of properties in favour of Raghuvaran and therefore the suit for partition is not maintainable.

2. In the suit plaintiff filed an application under Order XXXIX Rule 1 of Code of Civil Procedure. The trial Court granted an order of temporary injunction as per order in I.A.2066/97. First defendant filed I.A.1223/97 under Order XL Rule 1 of Code of Civil Procedure for appointment of a receiver contending that waste is being committed in the plaint schedule properties. Under Ext.P11 order, Sub Judge, Neyyattinkara dismissed the said application. Plaintiff challenged that order in C.M.A.51/99. First defendant challenged it in C.M.A.65/99. Under Ext.P13 order, learned Addl. District Judge set aside Ext.P12 order directed trial Court to appoint one of the parties as receiver. The trial Court thereafter appointed plaintiff as receiver on 17.5.04. Third defendant has filed this petition under Article 227 of Constitution of India challenging Ext.P13 order contending that the Addl. District Judge should not have interfered with Ext.P11 order.

3. Learned Counsel appearing for petitioner and first respondent were heard.

4. Arguments of learned Counsel appearing for petitioner was that when trial Court exercised the discretion vested in it and

found that it is not just and convenient to appoint a receiver, the discretion exercised by the trial Court should not have been interfered by Addl. District Judge in exercise of the appellate jurisdiction. Reliance was placed on the decision of Apex Court in **Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg &anr.(AIR 1977 SC 747)** and Division Bench of this Court in **Basselios Thomas I Catholicos Vs. Thomas Mar Athanasius (2003(1)KLT 10)**. Relying on the decision of the Apex Court in **Surya Dev Rai Vs. Ram Chander Rai (2003(3)KLT 490 SC)** , learned Counsel vehemently argued that when the Appellate Court wrongly interfered with the discretion exercised by the trial Court, this Court is competent to exercise the supervisory jurisdiction to correct the error and therefore Ext.P13 order is to be quashed.

5. Learned Counsel vehemently argued that there was collusion between plaintiff and first defendant and plaintiff had only sought an order of temporary injunction, which was granted by the trial Court under Ext.P12 order and thereafter first defendant moved an application for appointment of receiver and the trial Court on appreciating the facts found that appointment of receiver is not warranted and the appellate Court has virtually decided the suit by Ext.P13 order and found that receiver is to be appointed and in such circumstances Ext.P13 order of appointment of receiver is to be set aside. It was argued that the receiver had not taken possession of

all the properties, as portions of properties were already alienated and those properties were not taken possession by the receiver and the properties are being wasted and petitioner had filed an application before the trial Court for removing the plaintiff as receiver and no order was passed in the application and petitioner was compelled to file writ petition No.9087/06 before this Court and in spite of the direction issued by this Court, no order was passed by the trial Court and therefore Ext.P13 is to be quashed.

6. On hearing learned Counsel appearing for petitioner and first respondent and on going through the orders passed by the Courts below, it is clear that the properties sought to be partitioned originally belonged to Neelu Janaki, the mother, who executed Ext.P5 settlement deed in favour of her three children,plaintiff, defendants 1 and 2. Petitioner/third defendant would contend that Ext.A1 is only a will, which was subsequently cancelled under Ext.P6 and Neelu Janaki had executed Ext.P7 settlement deed where under Items 1,2,5 and 6 were gifted to third defendant. As rightly found by learned District Judge, the crucial question is whether Ext.P5 is a settlement deed, which has been acted upon or a will. If it is a settlement deed, which has been acted upon, it cannot be cancelled under Ext.P6 and third defendant cannot claim any right, title or possession under Ext.P7. The question whether Ext.P5 is a settlement, which has been acted upon and whether Ext.P6 and P7

are valid or not are to be decided by the trial Court on the basis of the evidence to be let in. Even though it was vehemently argued by learned Counsel appearing for petitioner that the trial Court has exercised the discretion which was improperly interfered by the appellate Court, it is seen from Ext.P11 order that the trial Court exercised the discretion only on the basis that Ext.P5 is a will, which could be cancelled under Ext.P6. The appellate Court found that on the basis of the contentions raised by second defendant, father of third defendant, obtained decrees admitting acceptance of Ext.P5 settlement deed. Eventhough learned Addl. District Judge has entered a decision on that aspect, it was only be for the limited purpose of deciding the question of appointment of the receiver. That question has to be finally settled by the Court only on the basis of the evidence. Findings in Ext.P13 order Court was warranted as the discretion exercised by the trial Court was only on the interpretation of Ext.P5 settlement deed. When interference of the discretion exercised by the trial Court was on that basis,it cannot be said that the interference was illegal or unwarranted. In any event it is not a matter to be interfered by this Court in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India. If that be so, I do not find any reason to interfere with Ext.P13 order passed by the trial Court.

7. The suit was instituted in 1997. Trial Court has to

decided the suit expeditiously, without further delay. As it is the specific case of petitioner, third defendant, that plaintiff, who was appointed the receiver is not properly managing properties and is committing waste of the estate, trial Court is directed to pass appropriate order in the application filed by third defendant to remove the plaintiff from the receivership. Learned Sub Judge is directed to dispose the suit untrammeled by any any observation either in Ext.P11 or Ext.P13 orders or in this judgment.

M.SASIDHARAN NAMBIAR,JUDGE

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